

AMENDED IN ASSEMBLY MARCH 12, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 235

Introduced by Assembly Member Tran

(Coauthors: Assembly Members Adams, ~~Benoit~~, Anderson, Benoit, Cook, Coto, DeVore, Dymally, Gaines, Garrick, Horton, Houston, Huff, Jeffries, Maze, Nakanishi, Niello, Portantino, Sharon Runner, Spitzer, and Strickland)

(Coauthors: Senators Battin, Cogdill, and Harman)

January 30, 2007

An act to amend ~~Section~~ *Sections 801.2 and 803* of the Penal Code, relating to statutes of limitations.

LEGISLATIVE COUNSEL'S DIGEST

AB 235, as amended, Tran. Statute of limitations: child pornography.

Existing law sets forth various statutes of limitations for various crimes. Existing law provides that the applicable period of limitations does not begin to run on a violation of prohibitions against engaging in certain transactions involving monetary instruments connected to criminal activity until the offense has been, or reasonably could have been, discovered.

This bill would ~~include in the types of offenses for which the period of limitations does not run until the offense has been~~ *provide that a criminal complaint for the secret filming of a person may be filed within one year of the date the offense is discovered*, or reasonably could have been discovered, ~~the production of child pornography or the secret filming of a person.~~

Under existing law, prosecution for the production of child pornography for commercial purposes shall commence within 10 years of the date of production of the material.

This bill would instead provide that prosecution for the production of child pornography for commercial purposes shall commence within 10 years of the date on which the production of the material was discovered or reasonably could have been discovered.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 **SECTION 1.** *Section 801.2 of the Penal Code is amended to*
2 *read:*

3 801.2. Notwithstanding any other limitation of time prescribed
4 in this chapter, prosecution for a violation of subdivision (b) of
5 Section 311.4 shall commence within 10 years of the date ~~of that~~
6 *production of the pornographic material was discovered or*
7 *reasonably could have been discovered.*

8 ~~**SECTION 1.**~~

9 **SEC. 2.** Section 803 of the Penal Code is amended to read:

10 803. (a) Except as provided in this section, a limitation of time
11 prescribed in this chapter is not tolled or extended for any reason.

12 (b) No time during which prosecution of the same person for
13 the same conduct is pending in a court of this state is a part of a
14 limitation of time prescribed in this chapter.

15 (c) A limitation of time prescribed in this chapter does not
16 commence to run until the discovery of an offense described in
17 this subdivision. This subdivision applies to an offense punishable
18 by imprisonment in the state prison, a material element of which
19 is fraud or breach of a fiduciary obligation, the commission of the
20 crimes of theft or embezzlement upon an elder or dependent adult,
21 or the basis of which is misconduct in office by a public officer,
22 employee, or appointee, including, but not limited to, the following
23 offenses:

24 (1) Grand theft of any type, forgery, falsification of public
25 records, or acceptance of a bribe by a public official or a public
26 employee.

27 (2) A violation of Section 72, 118, 118a, 132, 134, or 186.10.

1 (3) A violation of Section 25540, of any type, or Section 25541
2 of the Corporations Code.

3 (4) A violation of Section 1090 or 27443 of the Government
4 Code.

5 (5) Felony welfare fraud or Medi-Cal fraud in violation of
6 Section 11483 or 14107 of the Welfare and Institutions Code.

7 (6) Felony insurance fraud in violation of Section 548 or 550
8 of this code or former Section 1871.1, or Section 1871.4, of the
9 Insurance Code.

10 (7) A violation of Section 580, 581, 582, 583, or 584 of the
11 Business and Professions Code.

12 (8) A violation of Section 22430 of the Business and Professions
13 Code.

14 (9) A violation of Section 103800 of the Health and Safety
15 Code.

16 (10) A violation of Section 529a.

17 (11) A violation of subdivision (d) or (e) of Section 368.

18 (d) If the defendant is out of the state when or after the offense
19 is committed, the prosecution may be commenced as provided in
20 Section 804 within the limitations of time prescribed by this
21 chapter, and no time up to a maximum of three years during which
22 the defendant is not within the state shall be a part of those
23 limitations.

24 (e) A limitation of time prescribed in this chapter does not
25 commence to run until the offense has been discovered, or could
26 have reasonably been discovered, with regard to offenses under
27 Division 7 (commencing with Section 13000) of the Water Code,
28 under Chapter 6.5 (commencing with Section 25100) of, Chapter
29 6.7 (commencing with Section 25280) of, or Chapter 6.8
30 (commencing with Section 25300) of, Division 20 of, or Part 4
31 (commencing with Section 41500) of Division 26 of, the Health
32 and Safety Code, or under Section 386, or offenses under Chapter
33 5 (commencing with Section 2000) of Division 2 of, Chapter 9
34 (commencing with Section 4000) of Division 2 of, Section 6126
35 of, Chapter 10 (commencing with Section 7301) of Division 3 of,
36 or Chapter 19.5 (commencing with Section 22440) of Division 8
37 of, the Business and Professions Code.

38 ~~(f) For offenses involving the production of child pornography,~~
39 ~~or an offense described in paragraph (2) of subdivision (k) of~~

~~Section 647, the limitation of time prescribed in this chapter does not commence to run until the offense has been discovered, or~~

(f) Notwithstanding any other limitation of time described in this chapter, a criminal complaint for an offense described in paragraph (2) of subdivision (k) of Section 647, may be filed within one year of the date the offense is discovered or reasonably could have been discovered.

(g) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a person of any age alleging that he or she, while under the age of 18 years, was the victim of a crime described in Section 261, 286, 288, 288a, 288.5, or 289, or Section 289.5, as enacted by Chapter 293 of the Statutes of 1991 relating to penetration by an unknown object.

(2) This subdivision applies only if all of the following occur:

(A) The limitation period specified in Section 800, 801, or 801.1, whichever is later, has expired.

(B) The crime involved substantial sexual conduct, as described in subdivision (b) of Section 1203.066, excluding masturbation that is not mutual.

(C) There is independent evidence that corroborates the victim's allegation. If the victim was 21 years of age or older at the time of the report, the independent evidence shall clearly and convincingly corroborate the victim's allegation.

(3) No evidence may be used to corroborate the victim's allegation that otherwise would be inadmissible during trial. Independent evidence does not include the opinions of mental health professionals.

(4) (A) In a criminal investigation involving any of the crimes listed in paragraph (1) committed against a child, when the applicable limitations period has not expired, that period shall be tolled from the time a party initiates litigation challenging a grand jury subpoena until the end of the litigation, including any associated writ or appellate proceeding, or until the final disclosure of evidence to the investigating or prosecuting agency, if that disclosure is ordered pursuant to the subpoena after the litigation.

(B) Nothing in this subdivision affects the definition or applicability of any evidentiary privilege.

1 (C) This subdivision shall not apply where a court finds that the
2 grand jury subpoena was issued or caused to be issued in bad faith.

3 (h) (1) Notwithstanding any other limitation of time described
4 in this chapter, a criminal complaint may be filed within one year
5 of the date on which the identity of the suspect is conclusively
6 established by DNA testing, if both of the following conditions
7 are met:

8 (A) The crime is one that is described in subparagraph (A) of
9 paragraph (2) of subdivision (a) of Section 290.

10 (B) The offense was committed prior to January 1, 2001, and
11 biological evidence collected in connection with the offense is
12 analyzed for DNA type no later than January 1, 2004, or the offense
13 was committed on or after January 1, 2001, and biological evidence
14 collected in connection with the offense is analyzed for DNA type
15 no later than two years from the date of the offense.

16 (2) For purposes of this section, “DNA” means deoxyribonucleic
17 acid.

18 (i) For any crime, the proof of which depends substantially upon
19 evidence that was seized under a warrant, but which is unavailable
20 to the prosecuting authority under the procedures described in
21 *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703, *People v.*
22 *Superior Court (Bauman & Rose)* (1995) 37 Cal.App.4th 1757, or
23 subdivision (c) of Section 1524, relating to claims of evidentiary
24 privilege or attorney work product, the limitation of time prescribed
25 in this chapter shall be tolled from the time of the seizure until
26 final disclosure of the evidence to the prosecuting authority.
27 Nothing in this section otherwise affects the definition or
28 applicability of any evidentiary privilege or attorney work product.